

AMENDMENT UNDER 37 C.F.R. § 1.111
Application No. 09/399,696
Attorney Docket: A8010

REMARKS

I. Introduction

Claims 1-18 are all the claims pending in the application. For the reasons given below, Applicant respectfully requests withdrawal of the rejections and allowance of all the pending claims. Claims 5-6, 11-12, and 17-18 have been amended to more clearly define their dependency and not for purposes of patentability.

II. Formalities

Applicant thanks the Examiner for initialing the Information Disclosure Statement filed on October 5, 2000 to indicate his consideration of the references cited therein.

According to Form PTO 948, the Draftsperson has objected to the drawings under 37 C.F.R. § 1.84(m) stating that the shading of Fig. 7 is not permissible. Applicant submits herewith a proposed drawing correction to overcome the Draftsperson's objection. Accordingly, Applicant respectfully requests that the Examiner indicate his acceptance of the drawings.

III. Claims 1-4, 7-10, and 13-16 are not anticipated by Chang et al., U.S. Patent No. 6,263,342 (hereinafter "Chang")

The Examiner rejected claims 1-4, 7-10, and 13-16 under 35 U.S.C. § 102(e) as allegedly being anticipated by Chang. Claims 1, 7, and 13 are independent claims respectively directed to

AMENDMENT UNDER 37 C.F.R. § 1.111
Application No. 09/399,696
Attorney Docket: A8010

a method, apparatus, and article of manufacture. The method of claim 1 will be discussed as representative of the apparatus of claim 7 and the manufacture of claim 13.

Claim 1 requires selecting a server to process the request based on a load of the server and based on whether the server can satisfy the request for data. The Examiner asserts that Chang discloses “when the Federated Datastore Server receiving a query from the client, the Federated Datastore server scans through the DL, OD, VI and DB2 Server Classes and determines which Server Classes will satisfy the user request.” To anticipate a claim, a reference must teach every element of the claim. *See, e.g.*, MPEP § 2131. Even assuming *ad arguendo* that the Examiner’s assertion concerning the Chang reference is accurate, it still fails to disclose selecting a server to process the request based on a load of the server as explicitly required in representative claim 1. Determining which Server Classes will satisfy a user request is not at all the same thing as selecting a server to process the request based on a load of the server. Accordingly, Applicant respectfully submits that claims 1, 7, and 13 are not anticipated by Chang. For at least the same reasons, Chang also fails to anticipate dependent claims 2-4, 6-10, and 14-16.

Furthermore, nothing in the combined teachings of Chang and Choquier would teach or suggest one of ordinary skill in the art how to make the necessary modifications to achieve the claimed invention. Consequently, claims 1-4, 7-10, and 13-16 are not obvious under 35 U.S.C. § 103(a) over the combination of Chang and Choquier.

AMENDMENT UNDER 37 C.F.R. § 1.111
Application No. 09/399,696
Attorney Docket: A8010

IV. Claims 5-6, 11-12, and 17-18 are patentable over Chang in view of Choquier et al., U.S. Patent No. 5,951,694 (hereinafter “Choquier”)

The Examiner rejected claims 5-6, 11-12, and 17-18 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Chang in view of Choquier.

Dependent claim 5 will be discussed as representative of dependent claims 11 and 17. Claim 5 requires upon receiving a request to add another server, connecting the server to an existing server in the server hierarchy based on a number of connections of the existing server. To establish a *prima facie* case of obviousness under § 103, a reference or combination of references must teach or suggest all of the claim limitations. *See, e.g.*, MPEP § 2143. For at the least the reasons given above with respect to the Chang reference not anticipating independent claim 1, the combination of Chang and Choquier fails to teach or suggest all of the limitations of claim 5, which depends from claim 1, and thus fails to give rise to a *prima facie* case of obviousness under § 103.

Additionally, the Examiner acknowledged that Chang fails to show upon receiving a request to add another server, connecting the server to an existing server in the server hierarchy based on a number of connections of the existing server as recited in claim 5. To compensate for this failure of Chang, the Examiner relied on Choquier.

Choquier, however, fails to teach or suggest upon receiving a request to add another server, connecting the server to an existing server in the server hierarchy based on a number of connections of the existing server as recited in claim 5. While Choquier does discuss adding and removing servers from a service group, Choquier does not teach or suggest 1) a server hierarchy,

AMENDMENT UNDER 37 C.F.R. § 1.111
Application No. 09/399,696
Attorney Docket: A8010

2) connecting a server to an existing server in a server hierarchy, or 3) connecting a server to an existing server in a server hierarchy based on a number of connections of the existing server.

Choquier does not teach or suggest a server hierarchy. The servers in Choquier do not form a hierarchy but are instead grouped into units labeled Service Groups made up of servers that all run the same service application. Consequently, Choquier does not teach or suggest connecting a server to an existing server in a server hierarchy. When Choquier discusses adding servers that run a service application, these servers are connected to a common network (LAN) and **not** to an existing server within a server hierarchy. Finally, Choquier does not teach or suggest connecting a server to an existing server in a server hierarchy based on a number of connections to the existing server. While Choquier does discuss adding a server to or extracting a server from a Service Group based on load information, Choquier fails to teach or suggest considering the number of connections of an existing server. The load information used in Choquier comes from averaging the CPU load values of the servers in the Service Group over a number of Service Maps and over a predetermined period of time.

Considering the combined teachings of Chang and Choquier, Applicant respectfully submits that the combined teachings considered as a whole neither teach or suggest upon receiving a request to add another server, connecting the server to an existing server in the server hierarchy based on a number of connections of the existing server as recited in claim 5.

Consequently, claim 5 is not obvious under 35 U.S.C. § 103(a) over the combination of Chang and Choquier.

AMENDMENT UNDER 37 C.F.R. § 1.111
Application No. 09/399,696
Attorney Docket: A8010

For at least the above reasons given for representative claim 5, claims 5, 11, and 17 are patentable over the combination of Chang in view of Choquier. Accordingly, Applicant respectfully requests withdrawal of the rejections, and allowance of claims 5, 11, and 17.

Dependent claim 6 will be discussed as representative of dependent claims 12 and 18. Claim 6 requires upon receiving a request to delete an existing server in the hierarchy, deleting that server. To establish a *prima facie* case of obviousness under § 103, a reference or combination of references must teach or suggest all of the claim limitations. *See, e.g.*, MPEP § 2143. For at the least the reasons given above with respect to the Chang reference not anticipating independent claim 1, the combination of Chang and Choquier fails to teach or suggest all of the limitations of claim 6, which depends from claim 1, so as to give rise to a *prima facie* case of obviousness under § 103.

Additionally, Chang fails to show upon receiving a request to delete an existing server in the hierarchy, deleting that server as recited in claim 6. To compensate for this failure of Chang, the Examiner relied on Choquier. Choquier, however, fails to teach or suggest upon receiving a request to delete an existing server in the hierarchy, deleting that server as recited in claim 6. While Choquier does discuss adding and removing servers from a service group, Choquier does not teach or suggest deleting an existing server in a server hierarchy.

Choquier does not teach or suggest a server hierarchy. The servers in Choquier do not form a hierarchy but are instead grouped into units labeled Service Groups made up of servers

AMENDMENT UNDER 37 C.F.R. § 1.111
Application No. 09/399,696
Attorney Docket: A8010

that all run the same service application. Consequently, Choquier does not teach or suggest deleting an existing server from a server hierarchy.

Considering the combined teachings of Chang and Choquier, Applicant respectfully submits that the combined teachings considered as a whole neither teach or suggest upon receiving a request to delete an existing server in the hierarchy, deleting that server as recited in claim 6. Consequently, claim 6 is not obvious under 35 U.S.C. § 103(a) over the combination of Chang and Choquier.

For at least the above reasons given for representative claim 6, claims 6, 12, and 18 are patentable over the combination of Chang in view of Choquier. Accordingly, Applicant respectfully requests withdrawal of the rejections and allowance of claims 6, 12, and 18.

V. Conclusion

Reconsideration and allowance of all claims are respectfully requested in view of the following remarks. In view of the foregoing, the claims are now believed to be in form for allowance, and such action is hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

Applicant files herewith a corrected formal drawing for Figure 7.

AMENDMENT UNDER 37 C.F.R. § 1.111
Application No. 09/399,696
Attorney Docket: A8010

Applicant hereby petitions for any extension of time which may be required to maintain the pendency of this case, and any required fee, except for the Issue Fee, for such extension is to be charged to Deposit Account No. 19-4880.

Respectfully submitted,



Kelly G. Hyndman
Registration No. 39,234

SUGHRUE MION, PLLC
2100 Pennsylvania Avenue, N.W.
Washington, D.C. 20037-3213
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

Date: November 16, 2001

APPENDIX

VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE CLAIMS:

The claims are amended as follows:

5. ~~(Amended)~~ The method of ~~claim 1~~claim 4, further comprising, upon receiving a request to add another server, connecting the server to an existing server in the server hierarchy based on a number of connections of the existing server.
6. ~~(Amended)~~ The method of ~~claim 1~~claim 4, further comprising, upon receiving a request to delete an existing server in the hierarchy, deleting that server.
11. ~~(Amended)~~ The apparatus of ~~claim 7~~claim 10, further comprising, upon receiving a request to add another server, connecting the server to an existing server in the server hierarchy based on a number of connections of the existing server.
12. ~~(Amended)~~ The apparatus of ~~claim 7~~claim 10, further comprising, upon receiving a request to delete an existing server in the hierarchy, deleting that server.
17. ~~(Amended)~~ The article of manufacture of ~~claim 13~~claim 16, further comprising, upon receiving a request to add another server, connecting the server to an existing server in the server hierarchy based on a number of connections of the existing server.
18. ~~(Amended)~~ The article of manufacture of ~~claim 13~~claim 16, further comprising, upon receiving a request to delete an existing server in the hierarchy, deleting that server.